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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,755	01/14/2000	KOJI SHIRAKI	MIT-B895	5476

30132 7590 08/12/2003

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EXAMINER
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GRAY, JILL M

ART UNIT	PAPER NUMBER
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1774

DATE MAILED: 08/12/2003

19

Please find below and/or attached an Office communication concerning this application or proceeding.

AS19

# Office Action Summary

Application N .

09/462,755

Applicant(s)

SHIRAKI ET AL.

Examiner

Cynthia H Kelly

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 75-85,87,89 and 148 is/are pending in the application.
- 4a) Of the above claim(s) 90-98,100-104 and 111-148 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 75-85,87,89,99 and 106 is/are rejected.
- 7) ☒ Claim(s) 105 and 107-110 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other:

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## **DETAILED ACTION**

### ***Response to Amendment***

The rejection of claims 75-80, 89, 99, and 105-110 under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 62-2226848, translation is withdrawn in view of applicants' amendments.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 81-85 and 87 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent No. 62-2226848, translation, for reasons of record.

Claims 75-85, 87, 89, 99, and 106 are rejected under 35 U.S.C. 103(a) as being unpatentable over Japanese Patent partial translation No. 61-163154, for reasons of record.

### ***Response to Arguments***

Applicant's arguments filed May 15, 2003 have been fully considered but they are not persuasive.

Applicants argue that the reinforcing coated fibers produced by the reference cannot possibly have unhardened dry hydraulic inorganic powder adhered thereto (claim 75) because the coating materials used by the reference are aqueous in nature. Applicants' further argue that the "cement solution" is invariably an aqueous system

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because the "cement paste" of the other embodiments is described as "having a small value of water-cement ratio".

In response thereto, the rejection of claims 75-80, 89, 99, and 105-110 has been withdrawn based upon the amendments to claim 75. As to claims 81 and 85, these claims are drawn to a hardened reinforcing material which necessitates the presence of water.

Applicants argue that regarding claim 85, it can be readily recognized that the structure of the hardened product will vary in accordance with the manner in which it is made.

In this concern, applicants' claims are drawn to the product – a hardened reinforcing material. It is the examiner's position that when the product of the prior art appears to be the same as the present invention, the process of making is not germane. Though applicants argue a structural difference in the present invention, there is no clear factual evidence of record that the hardened reinforcing material of the present invention is structurally different from that taught in the prior art. Applicants have not clearly defined that which they regard as their invention.

#### ***Allowable Subject Matter***

Claims 105 and 107-110 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Conclusion***

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**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to J. M. Gray whose telephone number is 308-2381. The examiner can normally be reached on Monday-Thursday from 9:30 to 7:00. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Cynthia H Kelly, can be reached on (703) 308-0449. The fax phone number for the organization where this application or proceeding is assigned is 306-5439.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 308-0661.

*JMG*  
8/10/03

CYNTHIA H. KELLY  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1700

*Cynthia H Kelly*